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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,841	09/19/2003	Richard W. Berger	BDGOP001X1	6045
22434	7590	09/04/2007		
BEYER WEAVER LLP P.O. BOX 70250 OAKLAND, CA 94612-0250			EXAMINER SHAH, AMEE A	
			ART UNIT 3625	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/665,841	Applicant(s) BERGER ET AL.	
	Examiner Amea A. Shah	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 1-40 are pending in this action.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 26, 2007, has been entered.

#### ***Response to Amendment***

Applicant's amendment, filed, July 26, 2007, has been entered. Claims 1-4, 18, 21-24, 27, and 38 have been amended.

#### ***Examiner Note***

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-7, 14, 15, 18-27, 34, 35 and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al., US 6,125,352, cited by Applicant (hereinafter referred to as "Franklin") in view of Webber, WO 98/34167, cited by Applicant (hereinafter referred to as "Webber").**

Referring to claims 1 and 2.

Franklin teaches a system for conducting commerce over a distributed network that coordinates the distribution of products from a given or a plurality of product suppliers to consumers in a network environment, comprising a graphical consumer interface configured to display product information for products from a plurality of suppliers and to receive consumer product orders from consumers to suppliers for products of a plurality of suppliers (Figs. 1 and 4, col. 2, lines 28-53, col. 7, lines 28-42, 49-58 and 65-67, col. 8, lines 1-18 and col. 22, lines 10-17).

Webber, in the same field of endeavor and/or pertaining to the same issue, teaches a system of automating transactions by buying and distributing products. In Webber's invention, certain events, such as a buyer ordering a product, trigger computational activity, such as determining which supplier to use, based on the contracts associated with the transaction (see, e.g., page 1, line 3 through page 2, line 11). The contracts contain operational instructions and other terms and conditions including fulfillment policies of the suppliers and are negotiated and approved contracts (Figs. 2 and 4, page 15, lines 6-12, page 41, lines 15-17, and page 51, line 21). In a negotiated contract, the parties agree to and select the terms and conditions, one of which is the fulfillment policies, i.e. the fulfillment policies are selected by the seller. Thus, Webber teaches an order flow controller configured to selectively route consumer product orders for one or more products of a given supplier to said given supplier or to one or more retailers identified by said given supplier in accordance with the fulfillment policies selected by said given supplier. This automatic selection provides many benefits such as reducing costs (page 7, lines 22-23), improving accuracy, (page 7, lines 24-25), and saving time (page 7, lines 26-27).

It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine the known elements of a graphical user interface configured to display product information and receive consumer orders, as taught by Franklin, with the known elements of a controller configured to selectively route consumer orders of a given supplier to that supplier in accordance with the fulfillment policies, as taught by Webber, as each element would have performed the same function in combination as it did separately. One ordinary skill in the art would have recognized that the combination of Franklin and Webber would yield the

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predictable results of reducing costs, improving accuracy and saving time, as suggested by Webber.

Referring to claim 3. Franklin in view of Webber teaches the system of claim 1 or 2 wherein the order flow controller is configured to not accept consumer orders for one or more products of a given supplier in accordance with the fulfillment policy selected by said given supplier (Webber, page 22, lines 13-15). It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine Webber with Franklin to achieve the predictable result of taking only orders capable of being fulfilled in accordance with the supplier's policies, thereby reducing the frustration of consumers of unfulfilled orders and increasing customer satisfaction.

Referring to claim 4. Franklin in view of Webber teaches the system of claim 1 or 2 wherein the order flow controller is configured to route consumer product orders for one or more products of a given supplier to a product order list accessible by said given supplier or by one or more retailers identified by said given supplier in accordance with the fulfillment policies selected by said given supplier (Webber, page 20, lines 19-24 and page 22, lines 11-30). It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine Webber with Franklin to achieve the predictable result of effectively and seamlessly fulfilling the consumer's product order.

Referring to claim 5. Franklin in view of Webber teaches the system of claim 4 further comprising a back room manager configured to remove product orders from the product order list upon receipt of a fulfillment acceptance indication from a retailer or supplier (Franklin, col. 21, lines 45-67 and col. 22, lines 1-7).

Referring to claim 6. Franklin in view of Webber teaches the system of claim 5 wherein the back room manager is configured to enable the given supplier to fulfill selected product orders identified on the product order list (Franklin, col. 27, lines 11-28 and 44-50).

Referring to claim 7. Franklin in view of Webber teaches the system of claim 6 wherein the back room manager is configured to enable the given supplier to fulfill selected product orders identified on the product order list only after a preselected period of time has passed since the product order was received (Webber, page 23, lines 25-30, note the preselected period of time is the traditional time expirations event to trigger contractual operations for which timing is specified within the contracts). It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine Webber with Franklin to achieve the predictable result of allowing for enough time to pass for the sale request at a point of sale to be transmitted and trigger the initiation of operations for the supply chain.

Referring to claim 14. Franklin in view of Webber teaches the system of claim 1 or 2 further comprising a price filter configured to transmit product price information and product availability information to the consumer interface (Webber, page 51, lines 15-31 and page 53,

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lines 1-16 – note the product price information is the price of the goods or services and the product availability is the inventory management and shipping logistics). It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine Webber with Franklin to achieve the predictable result of better inform the consumer of the details of the order, decreasing the opportunities of errors, and increasing consumer satisfaction.

Referring to claim 15. Franklin in view of Webber teaches the system of claim 14 wherein the price filter is configured to transmit supplier specified product prices (Webber, page 52, lines 1-6). It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine Webber with Franklin to achieve the predictable result of provide the customer with the more specific information on pricing, thereby increasing customer satisfaction.

Referring to claim 18. Franklin in view of Webber teaches the system of claim 1 or 2 further comprising an escrow account manager configured to retain consumer payments for a period of time selected by said given supplier and to distribute retained funds (Webber, page 28, line 30 through page 29, line 25 – note that the escrow account manager is the invented system wherein the cash settlement can be delayed until after the parties approve or disapprove the settlement). It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine Webber with Franklin to achieve the predictable result of



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providing assurance to the customer that they will not be charged until the order is fulfilled or they are satisfied, increasing consumer trust and satisfaction.

Referring to claim 19. Franklin in view of Webber teaches the system of claim 18 wherein the escrow account manager is configured to distribute retained funds to an entity that shipped a product to a consumer (Webber, Fig. 4 and col. 4, lines 53-57). It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine Webber with Franklin to achieve the predictable result of allow for the shipper to obtain payment.

Referring to claim 20. Franklin in view of Webber teaches the system of claim 18 wherein the escrow account manager is configured to distribute funds retained for a given product order to a supplier that fulfilled the given product order, one or more retailers identified by that supplier, or to a combination of supplier and one or more of said retailers (Webber, Fig. 4 and page 32, lines 26-29 – note that the configuration to distribute funds retained is the system providing for conventional retailer connections as well as banks). It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine Webber with Franklin to achieve the predictable result of a system connected to a multitude of sellers, enterprises and banks, thereby providing the consumer with more choices and increased ease and seamlessness.

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Referring to claims 21-27, 34, 35 and 38-40. All of the limitations in method claims 21-27, 34, 35 and 38-40 are closely parallel to the limitations of apparatus claims 1-7, 14, 15 and 18-20, respectively, analyzed above and are rejected on the same bases.

**Claims 8, 9, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin in view of Webber as applied to claims 1, 2, 21 and 22 above, and further in view of Johnson et al., US 6,055,516, cited by Applicant (hereinafter referred to as “Johnson”)**

Referring to claim 8. Franklin in view of Webber teaches the system of claims 1 and 2, discussed above. Franklin further teaches that data for each product is organized into groups (col. 6, lines 45-66).

Johnson, in the same field of endeavor and/or pertaining to the same issue, discloses an electronic sourcing system maintaining a catalog of product information, checks availability of selected items and generates one or more purchase orders, including a consumer interface configured to display price and availability information for the products of each of the suppliers organized by product category (see Abstract, col. 5, lines 23-32, col. 6, lines 20-25 and col. 9, lines 42-55).

It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of displaying price and availability information for the products of each of the supplier organized by product category, a taught by Johnson, to improve the graphical user interface of Franklin for the predictable result suggested by Johnson

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of allowing customers to be able to better compare prices and availability of products so that they can make a better decision, thereby increasing customer satisfaction.

Referring to claim 9. Franklin in view of Webber and further in view of Johnson discloses the system of claim 8 further comprising a search engine configured to enable a consumer to search through the products of a given category by supplier, by product type, by product feature, or by a combination of two or more of these identifiers (Johnson, col. 4, lines 51-65). It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to combine the elements of Franklin, Webber and Johnson for the predictable results of providing easier browsing of catalogs and selecting of products.

Referring to claims 28 and 29. All of the limitations in method claims 28 and 29 are closely parallel to the limitations of apparatus claims 18 and 19, respectively, analyzed above and are rejected on the same bases.

**Claims 10-13 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin in view of Webber as applied to claims 1, 2, 21 and 22 above, and further in view of Knowlton et al., US 6,061,057, cited by Applicant (hereinafter referred to as "Knowlton").**

Referring to claim 10. Franklin in view of Webber teaches the system of claims 1 and 2, as discussed above.

Knowlton, in the same field of endeavor and/or pertaining to the same issue, discloses an apparatus and method for creating and distributing graphical user interfaces for application programs including a consumer interface configured to enable a consumer to display selected product representations in a separate scratch pad window (col. 4, line 14 through col. 7, line 20 – note the product representations are the displayable images or icons).

It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of a consumer interface enabling a consumer to display selected product representations in a separate scratch pad window, as taught by Knowlton, to improve the graphical user interface of Franklin for the predictable results suggested by Knowlton of facilitating consumer browsing and allowing for more efficient presentation of goods and transactions (col. 2, lines 8-28).

Referring to claim 11. Franklin in view of Webber and further in view of Knowlton teaches the system of claim 10 wherein the consumer interface is configured to enable a consumer to remove product representations from the scratch pad window (Knowlton, col. 33, lines 41-59 – note that removing product representations is inherently included in the creation of desired lists). It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of a consumer interface enabling a consumer to remove product representations from the separate scratch pad window, as taught by Knowlton, to improve the graphical user interface of Franklin for the predictable results suggested by Knowlton of facilitating consumer browsing and allowing for more efficient presentation of goods and transactions (col. 2, lines 8-28).

Referring to claim 12. Franklin in view of Webber and further in view of Knowlton teaches the system of claim 10 wherein the consumer interface is configured to enable a consumer to drag a selected product representation from a product previews window to the scratch pad window (Knowlton, col. 33, lines 41-59). It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of a consumer interface enabling a consumer to drag selected product representations to the separate scratch pad window, as taught by Knowlton, to improve the graphical user interface of Franklin for the predictable results suggested by Knowlton of facilitating consumer browsing and allowing for more efficient presentation of goods and transactions (col. 2, lines 8-28).

Referring to claim 13. Franklin in view of Webber and further in view of Knowlton teaches the system of claim 12 wherein the consumer interface is configured to enable a consumer to initiate a product order from the scratch pad window or from the product preview window, or from both windows (Knowlton, col. 17, lines 5-10 – note the initiation of a product order is the updating of offering on a web page and the adding or removal of VLOs and not the entire web page). It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of a consumer interface enabling a consumer to initiate a product order from the separate scratch pad window, product preview window or both, as taught by Knowlton, to improve the graphical user interface of Franklin for the predictable results suggested by Knowlton of allowing for immediate or delayed purchasing/drafting, thereby increasing customer satisfaction.

Referring to claims 30-33. All of the limitations in method claims 30-33 are closely parallel to the limitations of apparatus claims 10-13, respectively, analyzed above and are rejected on the same bases.

**Claims 16, 17, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin in view of Webber as applied to claims 15 and 35 above, and further in view of Allsop et al., US 5,970,471, cited by Applicant (hereinafter referred to as "Allsop").**

Referring to claim 16. Franklin in view of Webber teaches the system of claim 15 with contracts which supply prices during preselected periods of time (Webber, page 23, line 26 and page 41, lines 20-25).

Allsop, in the same field of endeavor and/or pertaining to the same issue, teaches a system and method for performing electronic commerce with links from product manufacturers to authorized dealers with custom order interfaces, including a price filter configured to transmit retailer specified product prices (see Abstract – note the retailers are the dealerships).

It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of transmitting retailer specified product prices, as taught by Allsop, to improve the price filter of Webber for the predictable result of allowing for more informed and knowledgeable customers who are able to find out the retailer specified prices.

Referring to claim 17. Franklin in view of Webber and further in view of Allsop discloses the system of claim 16 wherein the price filter is configured to transmit only a selected number of the lowest retailer specified product prices (Allsop, see Abstract – note the selected number of prices are the prices of the selected dealers). It would have been obvious to a person of ordinary skill in the art of business methods at the time of the invention to apply the element of transmitting only a selected number of the lowest retailer specified product prices, as taught by Allsop, to improve the price filter of Webber for the predictable result of channeling business to certain retailers over others.

Referring to claims 36 and 37. All of the limitations in method claims 36 and 37 are closely parallel to the limitations of apparatus claims 16 and 17, respectively, analyzed above and are rejected on the same bases.

### ***Response to Arguments***

Applicant's arguments filed July 26, 2007, have been fully considered but they are not persuasive.

In response to applicant's argument regarding claims 1-40 that Webber does not show that the contract terms explicitly includes control of the fulfillment terms by the supplier and thus does not teach an order flow controller configured to selectively route consumer product orders for one or more products of a given supplier to said given supplier or to one or more retailers identified by said given supplier in accordance with the fulfillment policies selected by said

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given supplier (Remarks, page 9), the Examiner disagrees. First, applicant mischaracterizes the invention of Webber. It is not “a way of avoiding record keeping of sales and fulfillment of those sales by the seller” nor is it a reverse auction (Remarks, page 9). While that is an advantage of the invention, Webber is a way of electronically performing transactions, including determining suppliers, through a series of contracts (see, e.g., Abstract). It is through these contracts that rules for determining suppliers are created. These contracts are negotiated by the parties and include terms such as fulfillment policies, as discussed above. It is old and well known in business, and thus inherent, that in a negotiated contract, both parties select and agree to the terms. Therefore, the supplier can select the fulfillment policies. Thus, Webber provides the known element of selecting suppliers based on rules such as fulfillment policies that would be obvious to combine with the shopping system of Franklin.

Regarding applicant’s argument with reference to claim 3 that the examiner has not explained why one of ordinary skill in the art would want to configure Franklin in view of Webber to not accept consumer orders, i.e. there is no motivation or teaching to combine (Remarks, page 10), the Examiner directs applicant’s attention to *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007), which forecloses applicant’s argument that a specific teaching is required for a finding of obviousness, *id.*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.



***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amee A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAS

August 29, 2007

  
YOGESH C. GARG  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600